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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/684,869

10/06/2000

David Allison Bennett

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KHORSANDI PATENT LAW GROUP, A.L.C.

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EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT

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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/684,869	Applicant(s) BENNETT ET AL.	
	Examiner JAMISUE A. PLUCINSKI	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: <u>4/15/2010, 4/16/2010</u> | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 64-77, 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kara et al. (6,233,568) in view of Ramsden et al. (5,656,799), InterShipper (Newsbytes Article, Internet Update) UPS® On Call Air Pickup (www.apps.ups.com), UPS® Service Guide (www.ups.com) and FedEx® Services (www.fedex.com). and further in view of Barnett et al. (6,369,840).

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4. With respect to Claims 64, 68-77, 80 and 81: Kara discloses the use of a server based shipping management computer system comprising one server computer comprising a computer readable medium having computer readable computer code (see abstract) for:

- a. Receiving a set of package specifications (Figure 8, Box 802) and shipping information (Figure 8);
- b. Determining multiple shipping rates (first and second) for a first carrier (Figure 8, Boxes 807 and 808);
- c. Determining multiple shipping rates (third and fourth) for a second carrier (Figure 8, Boxes 807 and 808);
- d. Receiving a request from a user to ship a package using one of the services by one of the carriers (See Figure 8, Column 5, lines 56-67);
- e. Facilitating the delivery of the package (Column 6, lines 1-6).

5. Kara discloses calculating rates for multiple delivery services for multiple carriers, however fails to specifically disclose determining a target delivery date for each service. The use of determining target or expected delivery dates is old and well known in the art to determine. Ramsden discloses when shipping parcel specification is entered in, it will calculate an expected delivery date for each service and display to the customer wanting to ship a package (Column 21, lines 3-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kara to have an expected delivery date determined for each service, in order for the user to make an informed decision on how the parcel is to be shipped (See Ramsden, Column 21)

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6. Kara disclose the use of calculating and displaying rates for specific services, for multiple carriers, but fails to disclose the simultaneous display of rates for each carrier that includes rates of different services (Column 11, lines 1-13). InterShipper is an internet, online website, where internet users can enter origin, destination, package weight and dimensions and will be displayed every method possible that you can use to ship your package for all major shippers (See Internet Update Article Page 1, Paragraphs 1-3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kara and Ramsden to display every method possible to ship a package, as disclosed by InterShipper, in order to find the cheapest shipping rate (See Page 1).

7. Kara discloses receiving shipping information, however fails to disclose the receiving the shipping date from the user. UPS discloses its on-call pick up which allows a user to schedule a pick-up with UPS, therefore receiving a shipping date, the examiner considers the day the carrier picks up the package is the shipping date, since it is out of the user's hands at that time and the shipping process is started (see Page 1). Furthermore, UPS also discloses the shipping rates being calculated according to shipping rates, due to the fact that it calculates for Saturday Delivery. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kara, to have the ability to schedule a shipping date by the user, as taught by UPS. Using a known technique of a user inputting the shipping date, by scheduling a pick-up time, would have been obvious to one of ordinary skill in the art. (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

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8. Kara discloses a display where the rates of each carrier are displayed adjacent to the selected services (See Figures 8A). Ramsden discloses the use of determining a expected delivery data, however Kara and Ramsden does not specifically disclose the races with respect to time, according to the shipping date. Both UPS® and FedEx® disclose specific services where they are guaranteed delivery by a certain time in the day and disclose scheduling a pick-up. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the time sensitive "urgency" services, as disclosed by FedEx® and UPS®, in order to ship thing and compete with a time advantage using guaranteed delivery times and to reduce costs, when delivery time is not of importance. (See Fed Ex Page 1). Kara, InterShipper, UPS® and FedEx® fail to disclose the use of a simultaneous display with shows the date and time of services Barnett discloses the use of a calendar which can be used for online purchasing of services (column 2, lines 63-67), where there is a graphical representation of date on one axis and time on another (See Figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the display of rates of Kara, Ramsden Intershipper, UPS® and FedEx® with respect to day and time, include the day and time, as disclosed by Barnett, in order to provide a single integrated display that allows a user to order or purchase a system based on the calendar day and time (See Barnett, column 2).

9. With respect to Claims 65-67: See Kara Figure 8, Box 807 and 808.

Response to Amendment

10. The affidavit under 37 CFR 1.132 filed 4/16/10 is insufficient to overcome the rejection of claims 64-77, 80 and 81 based upon Kara, Intershipper, UPS and FedEx as set forth in the last

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Office action because: First the person making the declaration is not an un-biased party, but rather works for the assignee and hence has a vested interest in the outcome of the case. Further, Mr. Bennett is simply attempting to use the wayback machine, or Internet Archive to input information and obtain a quick cost calculator. However, the declaration is not arguing the reference as applied to the claims, but simply stating that through the archive, or Wayback machine, the quick cost calculator does not work. However as noted above in the rejection, it is not the quick cost calculator which performs all the operations, the UPS reference is simply used to show that it is old and well known to consider shipping dates and time as well as Saturday deliveries when calculating shipping rates. Therefore the affidavit is not found to be persuasive.

Response to Arguments

11. Applicant's arguments filed 4/16/10 have been fully considered but they are not persuasive.

12.

13. With respect to Applicant's argument that None of the cited references even when considered in combination, disclose a single input of a particular destination, package specification a shipping date, then determining, according to that single user input, shipping rates for multiple delivery services for multiple carriers: First it should be pointed out that it is not claimed in a single input, further, the specification and drawings do not disclose this as a single input, and even if it were claimed as a single input, it would merely be a matter of design choice. The same outcome would happen whether it was a single input or multiple inputs. Second the

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UPS reference is used to show that when a package is prepared you schedule a pick-up, therefore a date would need to be entered for that at the same time as the package specifications. The applicant is arguing that Kara does not calculate a shipping rates for an input including a shipping date. However, Kara is not relied on as teaching inputting the date, the UPS reference is used to teach that limitation. It should also be noted, that whether an expected delivery date is calculated using an "inputted" shipping date or the current date as the shipping date, is considered to be obvious to one of ordinary skill in the art, and not patentably distinct from the prior art of record.

14. With respect to Applicant's argument that none of the references disclose determining a shipping rates according to a shipping date: This argument is moot based on the new rejection above.

15. With respect to the Applicant's argument that the statement that Kara consideration of shipping dates was made without any citation of Kara, that statement was made as part of the rejection, but rather of the arguments. The examiner was not stating that Kara was used to show Saturday delivery, but a general statement that using shipping dates is well known. It is also well known the use of Saturday Delivery and rates being affected by Saturday delivery. And it is the examiner's position that when a rate is determined for Saturday delivery, then the ship date must be known in order to determine if it is Saturday delivery. This is shown in the FedEx reference cited above (See also references 6,047,271 and 6,041,318).

16. The applicant is arguing the references as not teaching the limitation of the shipping rates being determined in regards to shipping date. See argument above.

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17. With respect to Applicant's argument that none of the references disclose identifying days or dates and or times by which a package would be delivered: As stated by the rejection this feature is not taught by any one reference, however a combination of references. The FedEx and the UPS references show different urgencies, and these urgencies (next day, two day etc.) have times associated with the delivery, such as early morning or end of day time. The Ramsden reference discloses determining a specific day for multiple services and displays to the customer. The references show rules of each service of the carrier. UPS also discloses the use of a Time in Transit calculator. Barnett discloses the use of a calendaring system, and where as Barnett's calendaring system does not specifically state it is used for shipping, it states that it is used for service related items. Shipping is considered to be a service. And also discloses multiple service items can be shown on the calendar for comparison shopping purposes. Therefore, if the shipping was to be put on the calendar, than it is obvious that a date and time are going to need to be determined in order to display on the calculator. It is old and well known that when shipping a package through a commercial carrier, when you go into the carrier office, they will tell you a date that the item is promised by. Therefore dates are calculated by commercial carriers on a daily basis. Therefore even though one reference may not teach the entire reference, the combination of Kara, Ramsden, UPS, FedEx, InterShipper and Barnett discloses determining a delivery date and time for each carrier and each service. With respect to time, UPS and FedEx are used to show different services and how time is considered to be part of the service. Nicholls and Kara are used to calculate rates for services for a particular parcel.

18. With respect to Applicant's argument that InterShipper does not disclose a simultaneous display of rates: InterShipper states "Simply enter your origin....destination...with your package

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weight and dimensions. The free service will return every method possible that you can use to ship your package and arrange the results in cost order, and color code the results by approximate transit time". The appellant has stated that since this is a publication there is no assumption of enablement, and states that the InterShipper reference does not specifically state that the results are simultaneous or all at once. The examiner disagrees. The section recited above, it is clear that the results are returned all at once, because they are color coded and arranged in cost order and transit time. If the results were given one by one, then they could not be arranged, multiple results are given. Therefore it is the examiner's position that the section above states that the results of InterShipper are given simultaneously. Furthermore, it should be pointed out that a simultaneous display is already shown by Kara, a simultaneous display of rates for multiple carriers for a specified service, but fails to display the simultaneous display for each service for the multiple carriers, and it is the examiner position that InterShipper does this.

19. With respect to Applicant's argument that none of the references disclose a simultaneous display of rates and dates and times: The applicant is arguing the references separately, and not the combination of references as used in the rejection. The appellant is arguing that Barnett reference stating that the Barnett reference does not disclose determining a date and time of delivery. Again, as stated above, the appellant is arguing every reference separately. It is the combination of references which have been used to teach the patentable feature which the appellant is arguing. The FedEx and the UPS references show different urgencies, and these urgencies (next day, two day etc.) have times associated with the delivery, such as early morning or end of day time. The references show rules of each service of the carrier. UPS also discloses the use of a Time in Transit calculator. Barnett discloses the use of a calendaring system, and

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where as Barnett's calendaring system does not specifically state it is used for shipping, it states that it is used for service related items. Shipping is considered to be a service. And also discloses multiple service items can be shown on the calendar for comparison shopping purposes. Therefore, if the shipping was to be put on the calendar, than it is obvious that a date and time are going to need to be determined in order to display on the calculator. It is old and well known that when shipping a package through a commercial carrier, when you go into the carrier office, they will tell you a date that the item is promised by. Therefore dates are calculated by commercial carriers on a daily basis. Therefore even though one reference may not teach the entire reference, the combination of Nicholls, Kara, UPS, FedEx, Intershipper and Barnett discloses determining a delivery date and time for each carrier and each service and displaying them simultaneously.

20. With respect to Applicant's argument that the combination of limitations fails to meet the KSR test for non-obviousness: First the applicant is arguing that the references do not teach the entering of the specified date, however as disclosed above, the UPS reference. And as stated above, the applicant's specification outlines that the specified date is used to determine the delivery date which is then used to calculate the rates. When combining the references, this is how they would be calculated, therefore it is the examiner's position that the combination of references would produce the claimed invention. KSR states "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."). (See KSR [127 S Ct. at 1739]). The examiner has provided motivation in the rejection on the combining of the references, therefore even though for each element of he

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claim a separate piece of art is used, does not indicate it was not obvious. Furthermore, the UPS as well as the FedEx references were used to show what is commonly done in the art.

21. The arguments are not considered to be persuasive, and the rejections stand as stated above.

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629

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